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VIRGINIA SECTION

THE CONSTITUTIONALITY OF SECTION 4769, VIRGINIA CODE 1919.
—Section 4769 of the Code of 1919 provides:

“* * * if any person shall commit *larceny* or *robbery* beyond the jurisdiction of this State and bring the stolen property into the same he shall be liable to prosecution and punishment for his offense in any county or corporation in which he may be found *as if the same had been wholly committed therein.*”¹

(Italics ours.)

It is proposed to question the constitutionality of the above statute in so far as it provides that anyone, not a citizen of Virginia, committing larceny or robbery outside the territorial limits of Virginia and bringing the stolen property into this State shall be punished for larceny or robbery, as the case may be, “*as if the same had been wholly committed therein*”. With all deference to and respect for the wise legislators who enacted it, we feel that, aside from the question of its constitutionality, the statute is an unwise one for the following reasons:

1. The grade of the offense, the mode of trial, the quantum of punishment, and the process of expiation, would all be liable to be varied by the offender crossing a State line.²

2. It would subject the offender to trial in a tribunal powerless to compel the attendance of the witnesses necessary either for or against the accused, though the Constitutions of the United States and presumably of all the States, entitle anyone charged with crime to compulsory process to compel the attendance of witnesses in his favor.³

3. It renders nugatory, as to such offenses, the act of Congress providing for the extradition of fugitives from justice.

4. It is contrary to the letter and spirit of that provision of the Federal and State constitutions which says, no one shall be twice put in jeopardy for the same offense,⁴ because the record of conviction or acquittal in the second State would not be binding in the

¹ V. C. 1919, § 4769.

² “Now, if the felony (larceny) in this State is the same felony that was committed in the territory south of the Ohio, then it is a felony against the laws of the territory, and punishable there by pillory, branding and whipping, and not by death. It would be strange, then, to say he should be punished here with death for an offense against the laws of another State, which punishes only with infamy. * * * This offense has not been committed within the territory subject to the laws of this State, and therefore the prisoner is not liable to be punished by these laws.” *State v. Brown* (1794), 2 N. C. 100, 1 Am. Dec. 548.

³ U. S. Const. Amend. 6. See *People v. Jim Ti* (1867), 32 Cal. 60.

⁴ U. S. Const. Amend. 5; Va. Const., p. 8. *State v. Benham* (1829), 7 Conn. 414.

first,⁵ even though the statute of the second State should make conviction or acquittal in the first State a bar to prosecution in the second, as some of them do,⁶ because the second State could not make conviction or acquittal in its courts a bar to prosecution in the first State, nor could it rightfully deny extradition to the first State, whether the accused were acquitted in its own courts or convicted and had served out his sentence.

The constitutionality of our statute has never, so far as we can discover, been passed on by the courts. In some other States similar statutes have been upheld,⁷ and in still others their constitutionality has been denied.⁸ Now a State has two sorts of jurisdic-

⁵ *People v. Burke* (1834), 11 Wend. (N. Y.) 129. The court, speaking of an earlier Massachusetts case, said: "The most serious objection was, that the prisoner might be liable to be twice punished, for although punished there he was liable to be punished in the State of New Hampshire, where the property was originally stolen. To this, Sedgwick, justice, asks, wherefore should he not? and remarks, that for himself he felt no such tenderness for thieves as to desire that they should not be punished wherever guilty; if they offend against the laws of two States, they should be punished in both." In *State v. Le Blanch* (1864), 31 N. J. L. 82, the court answers this kind of reasoning. It says: "I know it has been intimated, even judicially, that we need have no such tenderness for thieves as to endeavor to prevent their being punished in two or more States for the same theft. Why not then abolish the plea of *autrefois convict* and punish them twice in the same jurisdiction? * * * But without pity for the guilty are we to be without justice for the innocent? The doctrine necessarily goes to this length, that after trial, attended with all the legal formalities and an acquittal by solemn judgment of law, the party so acquitted is left liable to a second trial, in another jurisdiction, for substantially the same offense."

⁶ Mich. Comp. L. § 5797. Our Virginia statute does not provide for the pleas of *autrefois convict* or *autrefois acquit*; moreover, it extends to robbery as well as to larceny.

⁷ *Henry v. State* (1870), 47 Tenn. 331; *People v. Burke*, *supra*; *Hemmiker v. State* (1849), 12 Mo. 453, 51 Am. Dec. 172.

⁸ In *Morissey v. People* (1863), 11 Mich. 327, the court was equally divided on the constitutionality of this statute as applied to goods brought into the State from a foreign country (Canada), and so the prisoner was discharged. Campbell, J., holding it unconstitutional, said: "There is no description of larceny (and this statute forms no exception to the rule) which does not make the offense consist of a felonious *taking*, and also of a *removal* with felonious intent. Both of these must coincide in order to make out the crime; and both, therefore, must occur within the territory of the sovereignty which punishes them. * * * Those cases which sustain such statutes treat them as punishing not the larceny, but the bringing of the property into the State. * * * But this construction is not warranted by the statute. It punishes the *larceny* and nothing else. * * * It is the *larceny committed in Canada*, which may be charged, convicted and punished, as if committed in Michigan." (Italics those of the court.) Now it is submitted that the reasoning of Justice Campbell, and it seems unanswerable, is just as applicable between sister States as between a State of the Union and a foreign country, because it is indisputable that as far as the enforcement of their criminal laws is concerned the States are foreign to each other with the single exception of the Federal extradition laws, which impose on the States the duty of returning fugitives from justice to sister States; and this exception is in itself the strongest argument against the necessity and wisdom of such statutes as are herein attacked. An early statute in North Carolina provided: "Whereas

tion, *first*, over all persons and property within its physical boundaries, or territorial jurisdiction, and *second*, it has jurisdiction over its own citizens wherever they may go, and on their return to the State it may punish them for any prohibited acts committed by them while abroad. And so, if the Virginia statute above was framed to apply only to citizens of Virginia committing robbery or larceny abroad, it would not be unconstitutional, for the reasons so forcefully stated by the North Carolina court in *State v. Knight*.⁹ Virginia at an early date in its State history had such a statute, which was held constitutional.¹⁰

But the present statute goes further, and undertakes to punish citizens of other States for either robbery or larceny where they have committed robbery or larceny without the territorial limits of the State and have brought the stolen property into it. In other words, the Legislature has endeavored, by statute, to extend the territorial jurisdiction of the State beyond its territorial limits and over persons who have not given their consent, expressly or impliedly. In the nature of our constitutional institutions this cannot be done.¹¹ While the jurisdiction of the State within its own territory is susceptible of no limitation not imposed by itself,¹² its courts derive their authority from the sovereign power of the State, and are restricted in its exercise to the circumscribed limits of the State.¹³ And the jurisdiction of a State being coextensive with its sovereignty,¹⁴ and such sovereignty, subject to the restrictions imposed by the federal constitution, extending throughout the entire territory of each State and to all persons and property within it,¹⁵ the converse of the proposition must be equally true, that no State

there is reason to apprehend that wicked and ill disposed persons, resident in the neighboring States, make a practice of counterfeiting the current bills of credit of this State; Be it enacted, etc., that all such persons shall be subject to the same mode of trial, and on conviction, liable to the same pains and penalties, as if the offense had been committed within the limits of this State, and be prosecuted in the Superior Court of any district of the State." This statute was held unconstitutional in *State v. Knight* (1799), 1 N. C. 44. The court said: "The States are to be considered, with respect to each other, as independent sovereignties. * * * Crimes and misdemeanors committed within the limits of each, are punishable only by the jurisdiction of that State where they arise; for the right of punishing, being founded upon the consent of the citizens, express or implied, cannot be directed against those who never were citizens, and who likewise committed the offense beyond the territorial limits of the State claiming jurisdiction."

⁹ *Supra*, note 8.

¹⁰ *Commonwealth v. Gaines* (1819), 4 Va. 172.

¹¹ *State v. Knight*, *supra*, note 8.

¹² *Watts v. Unione Austriaca di Navigazione* (1915), 224 Fed. 188.

¹³ *Hudson Nav. Co. v. Murray* (1916), 236 Fed. 419; *Hood v. State* (1877), 56 Ind. 263, 26 Am. Rep. 21; 15 C. J. 817.

¹⁴ *State v. Metcalf* (1896), 65 Mo. App. 681; *Saunders v. St. L.*, etc., *Anchor Line* (1889), 97 Mo. 26, 10 S. W. 595, 3 L. R. A. 390.

¹⁵ *Prov. Bank v. Billings* (1830), 4 Pet. 514, 562; *M'Culloch v. Md.* (1819), 4 Wheat. 316; 36 Cyc. 829.

can exercise jurisdiction by judicial process over persons or property outside its territorial limits.¹⁶

We conclude therefore, that this is an unconstitutional enactment for the following reasons:

1. It is extraterritorial, while all crime is essentially local.¹⁷
2. It imposes on our courts the duty of enforcing in this State the penal laws of other States and of foreign countries.¹⁸ This is because, even according to the statute, we cannot punish the accused in this State unless he has first been guilty of larceny or robbery in another State or a foreign country. In order to ascertain this, the laws of the State or country in question must first be established, because it may be that what is grand larceny here is only petty larceny or embezzlement there, or what would be robbery under our laws in certain cases might be only larceny or some other offense under theirs, and if we do not punish him according to the laws of the State where the crime was first committed, we are changing the nature of his offense after it has been committed.¹⁹

The statute is extraterritorial because it attempts to make the mere act of bringing in stolen goods larceny or robbery in Virginia, whereas these crimes consist in part of other acts not committed in Virginia, in addition to the asportation which does take place in Virginia, and in punishing for the entire offense we punish also those acts committed without as well as those committed within the State.

Of such extraterritorial laws in general, Professor Minor says: ²⁰

"Indeed the better view is that a statute punishing acts committed outside the State by persons not at the time citizens thereof is unconstitutional and beyond the power of the State. Thus if a white person marries a negro in a State where the marriage is legal, both being citizens of that State at the time, they could not afterwards be punished for such marriage in another State

¹⁶ *People v. Cent. R. Co.* (1870), 42 N. Y. 283, (writ of error dismissed 12 Wall. 455); 36 Cyc. 829.

¹⁷ *MacLeod v. Atty. Gen.* (1891), A. C. 455; *In re Fowles* (1913), 89 Kan. 430, 131 Pac. 598, 47 L. R. A. (N. S.) 227; *Marshall v. Sherman* (1895), 148 N. Y. 9, 42 N. E. 419, 34 L. R. A. 757, 51 Am. St. Rep. 654.

¹⁸ *Com. v. Uprichard* (1855), 69 Mass. 434. The court said: "Here the question is one of principle, whether the defendants have violated our law. * * * *It seems difficult to distinguish this from judicially enforcing and carrying into effect the penal laws of another government, instead of limiting our criminal jurisprudence to the execution of our own.*" (Italics ours.) In this case property was stolen in a British Province and brought by the thief into Massachusetts, and the court denied jurisdiction to punish him for the crime although in several earlier cases (*infra*, note 33) of goods brought by the thief from a sister State, the court had held that it had jurisdiction. But as Thomas, J., said in *Commonwealth v. Holder*, *infra*, note 33, the reasoning of this case applies with equal force to the case of goods brought from a sister State, and it in effect overrules, as its reasoning thoroughly undermines the earlier cases.

¹⁹ *State v. Brown*, *supra*, note 2.

²⁰ MINOR, NOTES ON CLARK'S CRIM. PROC. 1. See MINOR, CONFLICTS 497.

to which they afterwards migrate, under a statute making such marriages criminal."

And of the statute in question in particular he says:²¹

"In so far as this statute permits a prosecution in Virginia for the robbery committed outside the State, it would seem to be unconstitutional if the criminal be not a citizen of Virginia at the time, since robbery consists of the two acts of larceny and assault, and the assault has not occurred in Virginia." (Italics his.)

Mr. Minor does not pass upon the question of larceny.

If we complete the division of these two crimes into their *primary* elements, we find that robbery, in the last analysis, is composed of three acts, i. e., assault, caption, and asportation. Only asportation took place in Virginia and that is not larceny by itself. And larceny is composed of two acts at the common law, i. e., caption and asportation, and again only the asportation takes place in Virginia, which by itself may be a crime against the State of Virginia, but that crime is not larceny. The words of the ancient indictment were two "*cepit et asportavit*".

Now since, if this statute is unconstitutional as to larceny, it must necessarily, and *a fortiori* be unconstitutional as to robbery also, we will center our discussion on the former only.

The basis upon which such statutes are sought to be upheld is that every moment's possession by the thief being a wrongful possession, every new asportation must complete the crime of larceny afresh. In the words of the Court in *Commonwealth v. Uprichard*,²²

"Were it any other offense than that of larceny, which gives an ambulatory character to the offense, by the moveable character and the guilty possession of the goods stolen, there could be no doubt of the law, and no plausible pretense that our law had been violated, or the party amenable to penalties created by it."

And herein is the fallacy that has caused all the confusion and error. The common law never did make asportation of the stolen property from one *country* to another a new larceny,²³ it did not

²¹ *Supra*, note 20.

²² *Supra*, note 18.

²³ *Butler's Case*, 13 Co. Rep. 53, 3 Inst. 113, 77 Eng. Reprints 1463. The court said: "In that case it could not be felony punishable by common law, because the original act, (*scil.*) the taking of them, was not any offense whereof the common law taketh knowledge; and by consequence, the bringing of them into a country could not make the same felony punishable by our law; and it is not like, where one stealeth goods in one county, and brings them into another, there he may be indicted of felony in any of the counties, because that the original act was felony, whereof the common law taketh knowledge." See also *Reg. v. Madge* (1839), 9 C. & P. 29, 38 C. L. Rep. 23; *People v. Gardner* (1807), 2 Johns. (N. Y.) 477; *People v. Schenck* (1807), 2 Johns. (N. Y.) 479; *State v. Reonnals* (1859), 14 La. Ann. 278; *Beal v. State* (1860), 15 Ind. 378; *Lee v. State* (1879), 64 Ga. 203, 37 Am. Rep. 67; *Strouther v. Common-*

even make asportation from one *county in England to another county in England* a new or distinct larceny. What it did do was merely to confer on any *county* to which the goods were carried jurisdiction to try the thief *for the original offense*, provided the original offense was committed in another county of England.²⁴ The common law of England did not even punish as larceny in England the bringing into that country of goods stolen in Scotland.²⁵

Note that the difference in results between applying the fiction of the ambulatory nature of larceny as between counties and as between States is a wide one.

In the words of the Court in *State v. Le Blanch*,²⁶

"Whether the crime shall be regarded in a legal point of view as having been committed in the county of A, or in the county of B, or in both, can make little difference, either to the culprit on the one hand or to the public on the other. In any view the same law has been infringed, the same punishment will be inflicted, and the results of the proceedings will be everywhere conclusive."

The truth of the matter is that the rule in England was based on a mere fiction of law which was adopted merely for convenience in the administration of justice. To quote from a Pennsylvania case: ²⁷

"This question was founded on the general principle, that possession in the thief amounts to a larceny in every county into which he carries the goods because the *legal* possession still remains in the true owner, and therefore every moment's continuance of the felony, amounts to a new *caption* and *asportation*. There is considerable subtlety in this principle. * * * It was probably adopted for convenience. For it is scarcely reconcilable to plain common sense to say, that the continuance of the possession amounts to a *new taking*." (Italics the court's.)

To quote again from *State v. Le Blanch*, *supra*:

"A larceny is committed when with the requisite felonious intent there has been a taking and asportation; the conveyance of the property over a territorial line cannot duplicate the criminality. In the eye of reason and in the nature of things it is but a single offense."

Now let us examine the fiction on which the rule between coun-

wealth (1895), 92 Va. 789, 22 S. E. 852, 53 Am. St. Rep. 852, 1 Va. Law Reg. 600; *State v. Brown*, *supra*, note 2. See 1 Hale, P. C. 507; 2 Hale, P. C. 163; BLACKSTONE, COMM. 305.

²⁴ *Myers v. People* (1861), 26 Ill. 173.

²⁵ *Rex v. Anderson*, 2 East, P. C. 772. This was altered by Sts. 13 Geo. 3, c. 31, Sec. 84, and by 7 & 8 Geo. 4, c. 29, Sec. 76. But Hale says of them: "These statutes extended not to * * * offenses committed out of England."

²⁶ *Supra*, note 5.

²⁷ *Simmons v. Commonwealth* (1813), 5 Bin. (Pa.) 617.

ties was based. It never presumed to dispense with the element of *caption* in larceny. It could not. Without caption there could not be common law larceny. But the fiction was that the possession of the thief being illegal, the legal possession of the true owner was never interrupted, and therefore each moment of possession by the thief constituted a *new caption*. The inconsistency of the fiction is apparent. If the possession of the true owner was never interrupted, then there has never been any caption and not even the original offense has been committed. Or if we overlook this little inconsistency we run into another conclusion equally absurd. If each moment of possession by the thief constitutes a new caption and each movement of the property a new asportation, then the thief is guilty of as many crimes as time or space may be divisible into parts. The absurdity of the proposition is proof positive that it was a mere rule of convenience to give the county where the thief carried the goods jurisdiction of the *original crime*, and not to make a new and distinct offense, in each county, for which he might be separately punished. It is one thing to give jurisdiction of the original offense to another locality under the same general laws and sovereignty; it is quite another and an impossible thing to make a certain crime out of an act which is only half of that crime. This is further proved by the refusal of the common law to extend the fiction to goods brought from a foreign country, and the reason given for its refusal.²⁸

"In that case it could not be felony punishable by common law, because the *original act*, (*scil.*) *the taking* of them, was not any offense whereof the common law taketh knowledge." (Italics ours.)

Because if the mere asportation to a new locality of goods already stolen really constituted a new offense it would be the same whether counties or States were involved, and if it had been larceny in England the common law would have taken jurisdiction of it.

But however valuable the fiction was as between counties in England as a matter of convenience, it was not applicable between American States, because as to their penal laws the States are wholly foreign to each other.²⁹

Nevertheless, on a supposed analogy between the counties of England and the States of the American Union many courts have adopted the rule as between these States,³⁰ and some of them have

²⁸ See *supra*, note 23.

²⁹ Phillips v. Payne (1875), 92 U. S. 130; Buckner v. Finley (1829), 2 Pet. 586, 590; Warder v. Arrel (1796), 2 Va. 282, 298, 1 Am. Dec. 488. * * * "It therefore may be accepted as fundamental that laws are territorial in their application, and have no extraterritorial force; that all persons are subject to the laws of the State in which they are; and, as a corollary, that no person is subject to the laws of a State in which he is not." People v. Martin (1902), 38 Misc. Rep. 67, 76 N. Y. S. 953.

³⁰ State v. Newman (1873), 9 Nev. 48, 16 Am. Rep. 3; Hamilton v. State (1842), 11 Ohio 435. Read, J., in a strong dissenting opinion, said: "Upon what principle can it be held, in Ohio, that a person found in possession of a thing stolen in a sister State should be construed to

extended it to cases between a State and foreign countries even without the aid of statutes,³¹ while this has been done by statute in several States as we have already seen.

All of these cases depend on two erroneous assumptions:

1. That carrying the stolen goods from one county to another made a new larceny in the second county at common law. It did not; it only gave the second county jurisdiction of the original offense under the same laws that must have been invoked by the first county.

2. That the States of this Union bear a position to each other analogous to the counties of England.

In *State v. Ellis*,³² the court said:

have stolen the thing in Ohio? Not upon the common law principle, for the common law expressly forbids it. Not upon a statute of this State, for there is none. Shall it be upon usage? This would be a novelty. * * * Shall it be from the necessity of the case lest a rogue escape? Necessity confers no jurisdiction, and is the well-known plea of tyrants. If the conviction can only be sustained upon the ground that the prisoner actually stole the horse in Ohio, the reply is, he actually stole the horse in the State of Illinois. * * * Now at common law, whence this constructive doctrine is derived, it is only so held to give the county where the thief is taken jurisdiction to try and convict him of the *original* theft, and this is a bar to any other conviction. The law does not make distinctive larcenies by construction, but it is a mere fiction to give jurisdiction to the county, * * * and this, too, merely to try and punish him under the same law which he violated in committing the theft. Apply this to different States, with laws prescribing different punishments for larcenies, and having the right to punish all offenses committed within their limits, and what follows? You do not, by this construction give jurisdiction to try the thief under the laws where the theft was committed, but by construction draw the offense to a new jurisdiction, and under a different law prescribing a different punishment." In *Stanley v. State* (1873), 24 Ohio St. 166, 15 Am. Rep. 604, the court expressed itself as very much embarrassed by the rule in *Hamilton v. State*, *supra*, which it felt itself bound to follow between States, but rejected it as between a State and a foreign country. In *State v. Ellis* (1819), 3 Conn. 185, 8 Am. Dec. 175, see dissenting opinion by Peters, J., "The laws of these United States are as foreign to each other as those of any other sovereignties. *They are provable as facts, and not noticeable as laws.*" (Italics ours.) In *Commonwealth v. Uprichard*, *supra*, note 18, the court refused to extend the rule to property brought into the State from a foreign country. Of the opinion in this case the court in *State v. Le Blanch*, *supra*, notes 5 and 26, says; "It is remarkable that every reason, without exception, and many of them are most cogent ones, which are urged with so much force in the able opinion of Chief Justice Shaw against the jurisdiction in that case, apply in all their fullness, to the implication of a larceny from the possession of stolen goods in one State after their theft in another."

³¹ *State v. Bartlett* (1839), 11 Vt. 650; *State v. Underwood* (1858), 49 Me. 181, 77 Am. Dec. 254. In this case one judge delivered a strong dissenting opinion and another judge said that if the question were then being raised for the first time he would certainly dissent. "I do not think it can be sustained, either from principle, or by the weight of authority. If this court would deny the soundness of it altogether, * * * I would certainly concur in the decision. * * * The distinction which Shaw, C. J., attempts to draw in *Commonwealth v. Uprichard*, between the case of larceny in another State and in a foreign country, is, in my judgment, entirely without any foundation."

³² *Supra*, note 30. Note that this short quotation contains both of the erroneous assumptions mentioned. There is not the supposed analogy,

"The law, most probably, was originally settled on a *supposed analogy* to the stealing of goods in one county and conveying them into another; *in which event larceny is committed in both counties*. Whether there exists this analogy or not, in my opinion, it is much too late to recur to first principles." (Italics ours.)

It has been shown that this analogy most emphatically does not exist, and that even if it did the number of crimes is not multiplied thereby.³³

We come, then, without hesitation, to the following conclusions:

1. That the carrying of stolen goods from one place to another does not constitute larceny in the second place,—State or county,—because if it does the common law could have punished *as larceny* the bringing into England of goods stolen in any foreign country.

2. That a statute of this State which purports to punish *as larceny* or *as robbery*, in this State, the bringing into it, by other than its own citizens, of goods stolen or robbed in another State or foreign country, is unconstitutional, *first*, because the only act committed within its jurisdiction does not constitute larceny, and, *a fortiori*, does not constitute robbery, and, *second*, because the acts which do constitute these crimes are committed out of its territory and beyond its jurisdiction.

What follows then? Is the State helpless?

"There is surely no comity of nations which requires us to give free passage to felons from another country, carrying off stolen property."³⁴

There is not, but there *is* a comity which requires that he be surrendered to the State or country in which his crime was committed.

In a dissenting opinion in *Hamilton v. State*,³⁵ Read, J., said:

"But will it be said, there is a great evil in permitting thieves to live within our borders in the guilty possession of property which they have stolen in another State? True, but they must be delivered up if demanded; *and it would be very easy for the legislature to pass a law to punish a thief for having in his possession, within this State, goods which he has stolen in another.*" (Italics ours.)

The clause in italics suggests a remedy. If the legislature cannot punish *as larceny* the bringing of stolen goods here, at least they can prescribe a punishment for the crime of *bringing stolen goods* here.³⁶

and even between the counties of England the common law did not make the carrying of stolen goods from one to the other a *new larceny*. It merely gave the second county jurisdiction of the original larceny, which would be impossible between States or foreign countries.

³³ *Commonwealth v. Holder* (1857), 75 Mass. 7.

³⁴ *People v. Burke*, *supra*, notes 5 and 7.

³⁵ *Hamilton v. State*, *supra*, note 30.

³⁶ *Stanley v. State*, *supra*, note 30.

Whether the legislation suggested would be wise is another question, and for the four main reasons given in the early part of this note we doubt its wisdom seriously, but at least it would not be subject to the objection that it would be unconstitutional.

A close analogy is that of bigamy committed outside the State and cohabitation with the unlawful wife inside the State. It is universally held that statutes purporting to punish for *bigamy* where the bigamous marriage was not contracted within the State or by one of its citizens, but cohabitation within the State has followed, are unconstitutional and void.³⁷ But this does not take away the State's jurisdiction to punish for the *unlawful cohabitation* within its territory.

And here we get back on solid ground again. By punishing only the *bringing* of stolen goods into this State, or the *having of them in possession*, we punish the only offense committed against its sovereignty, and we leave to the particular sovereignty offended the punishing of the larceny or robbery itself, assisting it, where requested, under the extradition laws or under the comity of nations.

H. F. W.

INTOXICATING LIQUORS—CONSTITUTIONALITY OF PROVISION IN ACT OF 1922 FOR SEARCH WITHOUT WARRANT.—An Act of the General Assembly,¹ approved in March, 1922, provides:

" * * * all other officers charged with the enforcement of the prohibition laws of this State * * * without a warrant, may enter freight yards, passenger depots, baggage and storage rooms of any common carrier, and may enter any train, baggage, express, or freight car, and any boat, flying machines of any kind and submarines, automobile, or other conveyance, whether of like kind or not, or any billiard room, pool room or bowling alley, where there is reason to believe that the law relating to ardent spirits is being violated; but nothing in this proviso contained shall be construed to permit a search of * * * any hand bag, suitcase or trunk on any train or passenger steamboat, or the usual and ordinary hand baggage of pedestrians, unless such person be found in the act of violating the provisions of the prohibition laws of the State, but it shall be lawful to inspect and examine any such baggage while same shall be carried or found in any boat, automobile or other vehicle herein named, except a train or passenger boat, without a search warrant."

The Constitution of Virginia provides: ²

"That general warrants, whereby an officer or messenger may be

³⁷ *People v. Price* (1911), 250 Ill. 109, 95 N. E. 68; *State v. Cutshall* (1892), 110 N. C. 538, 15 S. E. 261, 16 L. R. A. 130; *State v. Barnett* (1880), 83 N. C. 615.

¹ Acts of Assembly, 1922, pp. 573, 582.

² Va. Const. Art. I, § 10.